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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Magalie Roman Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Re: EX PARTE -- CC Docket No. 01-194 Application of SBC Pursuant to  
Section 271 of the Telecommunications Act of 1996 to Provide InterLATA  
Service in Arkansas and Missouri

Dear Ms. Salas:

Enclosed are the comments of WorldCom, Inc. regarding the above-captioned section 271 application of SBC for the states of Arkansas and Missouri. Please call me with any questions.

Sincerely,

Lori Wright

Enclosures

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

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In the Matter of )  
 )  
Application by SBC Communications, Inc. )  
for Authorization to Provide In-Region, )  
InterLATA Services in Arkansas and Missouri )  
\_\_\_\_\_ )

CC Docket No. 01-194

**COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY SBC  
COMMUNICATIONS INC. FOR AUTHORIZATION TO PROVIDE  
IN-REGION, INTERLATA SERVICES IN ARKANSAS AND MISSOURI**

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September 10, 2001

## **INTRODUCTION AND EXECUTIVE SUMMARY**

SBC's application for authorization to provide long distance service in Arkansas and Missouri is deficient in at least the following ways and should be promptly denied. First, SBC has structured its DSL operations to prohibit competitors from reselling DSL service in Arkansas and Missouri. Second, SBC has not proven the operational readiness of its OSS, once again relying on self-certification and self-serving support by its longstanding auditor Ernst & Young. And third, SBC presents no evidence that its rates are consistent with FCC's TELRIC principles, and indeed they are not.

### **SBC Limits Availability of Advanced Services to Competitors**

In a move intended to impede competition for high-speed telecommunications services, SBC has structured its DSL operations in an attempt to avoid the resale obligations of the 1996 Telecommunications Act. Despite SBC's public statements citing its explosive DSL business with a customer subscriber base of nearly a million customers, SBC now asserts that it is under no obligation to offer its DSL services for resale. SBC boldly makes this argument based on its regulatory decision to offer DSL through its own affiliate. The facts demonstrate this structure is nothing more than a shell game to avoid the resale provisions of the Telecommunications Act, which should not be tolerated by this Commission. Contrary to its assertions, SBC's DSL operations violate the resale obligations embodied in checklist item 14. In addition, SBC has yet to implement a competitive means by which CLECs can access fiber-fed loops to provide DSL services to customers served off of remote terminals.

### **Viable OSS Should Be Demonstrated by Commercial Experience or Third-Party Verification, Not Self-Certification**

This application is further flawed by SBC once again relying on self-certification that its OSS in Arkansas and Missouri is workable and permits competitive entry. Even while still under investigation by the Commission for its OSS misrepresentations, SBC is seeking section 271 authority for two more states in this application, again relying on self-certification and self-serving support from its regular auditor. WorldCom agrees with CompTel that the Commission should not consider this application until it has completed its investigation of SBC and imposed appropriate sanctions, including prohibiting SBC from filing any section 271 applications that rely on self-certification and are not backed by an independent, third-party test.<sup>1</sup>

Competitors simply do not possess the resources to check the veracity of all the self-certified claims by SBC in its applications. Just after the Kansas-Oklahoma Order, one vigilant competitor was able to bring to light SBC's misrepresentations regarding its provision of loop qualification data to competitors.<sup>2</sup> Additionally, it was revealed that SBC made misrepresentations in its section 271 applications about problems with LMOS, a system that performs various maintenance and repair functions.<sup>3</sup> These good catches by competitors indicate that SBC cannot be relied on to certify the workability of its systems. But the Commission should not shift the burden to competitors to verify the truthfulness of SBC's representations, especially in states where there has been little commercial activity due to SBC's excessive UNE prices and other barriers to entry. It is the BOC that must demonstrate that its OSS is commercially viable. FCC precedent in previous section 271 orders and in the Act itself makes this abundantly clear. Although

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<sup>1</sup> See Letter from H. Russell Frisby, Jr., President, CompTel, to Michael K. Powell, Chairman, FCC (August 31, 2001).

<sup>2</sup> See Letter from Howard J. Siegel, Vice President of Regulatory Policy, IP Communications Corp., to Magalie Roman Salas, Secretary, FCC, CC Docket No. 00-217 (Nov. 30, 2000).

essential in all section 271 proceedings, credible third-party evidence demonstrating that OSS works is particularly important in states like Arkansas and Missouri, where local residential entry has not been viable and the BOC has been caught making serious misrepresentations.

There are at least two OSS issues in Arkansas and Missouri that the Commission should evaluate especially closely. First, in this application, SBC asserts that it has fixed the problems with LMOS (a problem that, as described further below, resulted in competitors not being able to submit trouble tickets electronically) and has Ernst & Young attest to this. WorldCom is not convinced that this problem has been fixed and will continue to work as advertised. The Commission should carefully evaluate this aspect of SBC's OSS due to its serious credibility issues. Second, SBC continues to fail to provide non-discriminatory access to line splitting because it does not provide competitors with a single-order process. SBC should affirmatively state whether it will meet its commitment to implement a single-order process in October of this year.

#### **SBC'S UNE Rates Are Not Compliant with TELRIC Principles**

SBC has not carried its burden of demonstrating cost-based TELRIC rates in Arkansas and Missouri. This burden rests solely with the BOC, and here SBC fails to provide any adequate basis on which to judge whether its rates are cost-based. SBC does not provide electronic costs studies for either Arkansas or Missouri. SBC's claims that it cannot offer its cost studies electronically as part of this application are not credible. The Commission should insist that SBC come forth with the basis for its UNE rates and apply TELRIC principles rather than relying on arbitrary rate reductions to make its rates appear less objectionable.

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<sup>3</sup> AT&T Letter (see Table of Citation Forms).

SBC did not correct the TELRIC problems that WorldCom pointed out in its comments on SBC's first section 271 application for Missouri. Rather, in recent weeks, SBC offered an arbitrary and inadequate rate reduction in Missouri. Although WorldCom obviously supports rate reductions, SBC's reductions are wholly inadequate, are not based on a TELRIC analysis, and do not result in UNE rates at TELRIC levels. The Commission should not condone SBC's game of incrementally lowering its UNE rates until it reaches prices that it believes will pass regulatory muster. This bidding process makes a mockery of the legal requirement that UNE rates be developed using a TELRIC analysis. To reemphasize what the Act and Commission orders make clear, TELRIC is a methodology that is used to arrive at proper forward-looking prices of network elements. TELRIC should not be, as SBC would have it, an arbitrary price point selected by the BOC and labeled "TELRIC" simply for purposes of gaining long distance authority.

In any event, the rates currently proposed by SBC in Missouri are significantly higher than in other states with similar cost characteristics, including the states where SBC today has long distance authorization. This indicates that the rates in Missouri could not be TELRIC-compliant, but rather were chosen by SBC in an attempt to barter its way into the long distance market without having to accept UNE prices based on TELRIC. The rates for switching and loops -- the most important network elements required for local competition -- are unreasonably high in Missouri when compared to the states where SBC already has received long distance authority. SBC's loop rates in Missouri are higher than in any state in the SWBT region, even though its costs are lower than in every state except Texas. With switching, SBC's rate in Missouri is about 16

percent higher than the switching rate in Kansas, again with no cost justification for the discrepancy. Moreover, in Arkansas there was no attempt to set TELRIC rates, but merely a wholesale adoption of Kansas rates that are not helping to bring local residential competition to Arkansas.

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A	Chris Frentrup	Pricing

**EXHIBITS**

<b>Tab</b>	<b>Description</b>
1	SBC Communications Inc. Quarterly Report Pursuant to Section 13 of 15(d) of the Securities Exchange Act of 1934 for quarterly period ended June 30, 2001, dated July 31, 2001
2	SBC Investor Briefing, <i>Strong Growth in Data, Wireless and Long Distance Highlights SBC's First Quarter Results</i> , dated April 23, 2001
3	SBC Web Site Excerpts
4	Verified Complaint of the California ISP Association, Inc. Against Pacific Bell Telephone Company and SBC Advanced Solutions, Inc.
5	Missouri/Arkansas DSL Maps

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<b>FCC Orders</b>	
<u>Kansas-Oklahoma Order</u>	<u>In re Application by SBC Communications Inc., Southwestern Bell Telephone Company, and Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance for Provision of In- Region, InterLATA Services in Kansas and Oklahoma</u> , CC Docket No. 00-217, Memorandum Opinion and Order, FCC 01-29 (rel. Jan. 22, 2001).
<u>Massachusetts Order</u>	<u>In re Application of Verizon New England Inc., Bell Atlantic Communications, Inc. (d/b/a Verizon Long Distance), NYNEX Long Distance Company (d/b/a Verizon Enterprise Solutions) and Verizon Global Networks Inc., for Authorization to Provide In-region, InterLATA Services in Massachusetts</u> , CC Docket No. 01-9, Memorandum Opinion and Order, 16 F.C.C.R. 8988 (2001).
<u>New York Order</u>	<u>In re Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Services in the State of New York</u> , CC Docket No. 99-295, Memorandum Opinion and Order, 15 F.C.C.R. 3953 (1999), <u>aff'd</u> , <u>AT&amp;T Corp. v. FCC</u> , 220 F.3d 607 (D.C. Cir. 2000).
<u>Project Pronto Order</u>	<u>In re Ameritech Corp. Transferor and SBC Communications, Inc. Transferee, for Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95 and 101 of the Commission's Rules</u> , CC Docket No. 98-141, Second Memorandum Opinion and Order, 15 F.C.C.R. 17521 (2000).
<u>Second Advanced Services Order</u>	<u>In re Deployment of Wireline Services Offering Advanced Telecommunications Capability</u> , CC Docket No. 98-147, Second Report and Order, FCC 99-330 (rel. Nov. 9, 1999)
<u>Texas Order</u>	<u>In re Application by SBC Communications Inc., Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services in Texas</u> , CC Docket No. 00-65, Memorandum Opinion and Order, 15 F.C.C.R. 18354 (2000).
<u>USF Tenth Report and Order</u>	<u>In re Federal-state Joint Board on Universal Service</u> , CC Docket No. 96-45, Tenth Report and Order, CC Docket No. 97-160, 14 F.C.C.R. 20156 (1999).
<b>Declarations and Affidavits</b>	
Chapman Aff.	Affidavit of Carol A. Chapman on Behalf of Southwestern Bell (SBC App. A, Tab 4).
Frentrup Decl.	Declaration of Chris Frentrup on Behalf of WorldCom Inc. (Tab A hereto).
Habeeb Aff.	Affidavit of Joseph S. Habeeb on Behalf of Southwestern Bell (SBC App. A, Tab 9).

Makarewicz Aff.	Affidavit of Thomas J. Makarewicz on Behalf of Southwestern Bell (SBC App. A, Tab 15).
<b>Other Record Materials</b>	
AT&T Letter	Letter from Richard E. Young, Sidley, Austin, Brown & Wood, to Magalie Roman Salas, Secretary FCC, CC Docket No. 01-88 (May 24, 2001).

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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InterLATA Services in Arkansas and Missouri	)	
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**COMMENTS OF WORLDCOM, INC. ON THE APPLICATION BY SBC  
COMMUNICATIONS, INC. FOR AUTHORIZATION TO PROVIDE  
IN-REGION, INTERLATA SERVICES IN ARKANSAS AND MISSOURI**

This application for section 271 authorization in Arkansas and Missouri raises serious concerns about the following issues: SBC's refusal to allow competitors to resell DSL service in Arkansas and Missouri; the sufficiency of SBC's OSS where, in the midst of being investigated by the Commission for lying under oath about its OSS processes, SBC has again relied on self-certification of OSS operability and some "testing" by its longstanding auditor Ernst & Young; and SBC's non-TELRIC UNE rates, particularly in Missouri, for switching and loops. The Commission should deny SBC's application on these grounds until they are remedied.

**I. SBC HAS NOT DEMONSTRATED THAT ITS ADVANCED SERVICES  
OFFERINGS ARE AVAILABLE FOR RESALE AND HAS NOT  
IMPLEMENTED A COMPETITIVE MEANS ALLOWING CLECS TO  
ACCESS FIBER-FED LOOPS TO PROVIDE DSL TO CUSTOMERS  
SERVED OFF REMOTE TERMINALS**

**A. SBC Has Created a Corporate Artifice to Avoid Resale Obligations  
Under Sections 251 and 271 of the Telecom Act**

SBC claims that only one of the three categories of DSL services that it provides is subject to the resale provisions of sections 251 and 271 of Telecommunications Act of

1996: the services that SBC sells through its affiliate, Advanced Solutions Inc. (“ASI”), to a very small number of grandfathered residential customers and to business customers. SBC Brief at 50. SBC argues that the other two categories of DSL services that it provides are not subject to resale because SBC sells such services to unaffiliated Internet Service Providers (“ISPs”), or to its own ISP, Southwestern Bell Internet Services, Inc. (“SBIS”). Despite SBC’s public statements citing its explosive DSL business with a customer subscriber base of approximately one million customers, and statements on its web site touting its years of experience in providing customers with all their communications needs, SBC asserts that it is not offering such services to end users, and thus is under no obligation to offer these services for resale. As explained in more detail below, SBC has attempted to structure its DSL operations in such a way as to avoid the resale obligations of the Telecommunications Act. In doing so, SBC is not only violating the spirit of both the Telecommunications Act and Commission orders, it is denying competitors the ability to resell the advanced services sold by SBC in violation of its checklist obligations.

SBC’s arguments center on claims that it does not provide DSL transport service to end-users on a retail basis. In its application, SBC claims that ASI’s customers are ISPs and not residential end-users. *Habeeb Aff.* ¶ 30. What is clear from reviewing SBC’s publicly available financial and marketing materials and proposed contract arrangements with ISPs is that SBC is effectively selling DSL services to end users, and therefore must offer them for resale by CLECs.

**B. SBC’s Investor and Marketing Materials, Along with Its Proposed Contracts with ISPs Demonstrate that SBC Is Selling DSL to End Users**

***Investor Materials:*** A review of SBC's recently released investor materials clearly states that SBC has residential end-user DSL customers. In its Quarterly Report (10Q) filed with the Securities and Exchange Commission on July 31, 2001, SBC states: "we increased our number of DSL customers to approximately 1,037,000 at the end of the second quarter of 2001."<sup>4</sup> Similarly, in an Investor Briefing, dated April 23, 2001, SBC states:

Going forward, SBC anticipates volatility in quarterly customer growth numbers as it completes the transition of its customer base to automated systems and as a limited number of ISP (Internet Service Provider) resellers and DSL providers work their way through widely reported financial difficulties. Because more than 80 percent of its DSL customer base obtains Internet access service directly from an SBC entity or affiliate, SBC has limited exposure to ISP financial failure.<sup>5</sup>

Based on this information, one would conclude that SBC-ASI sells DSL service to end-user customers. On behalf of SBC, Mr. Habeeb claims that ASI's customers are ISPs and not end-users, yet SBC says that it has over a million DSL *customers*. SBC cannot mean that it has over a million ISP customers.

***SBC's Web Site:*** SBC's web page, [www.sbc.com](http://www.sbc.com), provides a link under "products and services" to a DSL Internet Center.<sup>6</sup> The user is then instructed to click on "your local phone service area" which shows all of the SBC local companies, Pacific Bell, Southwestern Bell, SNET, Nevada Bell and Ameritech. When a user clicks on "Southwestern Bell," the site checks for availability in the customer's area, and allows the customer to order residential or business DSL service. In addition, the customer can inquire about pricing of the DSL service, and experience the DSL Internet through SBC's

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<sup>4</sup> SBC Communications Inc. Quarterly Report Pursuant to Section 13 or 15 (d) of the Securities Exchange Act of 1934 for quarterly period ended June 30, 2001, dated July 31, 2001 (attached hereto as Exhibit 1).

<sup>5</sup> SBC Investor Briefing, *Strong Growth in Data, Wireless and Long Distance Highlights SBC's First-Quarter Results*, dated April 23, 2001, at p. 4 (emphasis added) (attached hereto as Exhibit 2).

DSL Internet Showcase. Furthermore, the answer to the question, “Why buy DSL

Internet Service from SBC Internet Services?” is provided as follows:

When you buy DSL Internet Service from an SBC Internet Services Company, it’s backed up by years of experience and reliability from within the SBC family of companies. Our salespeople at Southwestern Bell have years of experience selling voice, data and other telecommunications products. So SBC Internet Services is able to deliver to you high-speed DSL Internet Service from a name you know and trust.<sup>7</sup>

Throughout the web site, it is clear that the “customer” is the end-user, and that the ultimate provider is SBC. The web site does include a small disclosure statement to the left of the site that reads, “DSL Internet Services provided by Southwestern Bell Internet Services, Inc.” but any user can order DSL service off of SBC’s web site. In fact, the web site does not provide any information on how a user would obtain DSL service from any other provider other than SBC. In response to the question, “Does DSL Internet come with an Internet service or do I have to get a provider?” the web site states, “SBC offers DSL Internet service through our SBC Internet Service affiliates.”<sup>8</sup> Nowhere under the “New Users” section does the web site explain that a user can obtain DSL Internet service from another provider. Moreover, WorldCom was unable to locate any information whatsoever on SBC’s web site about obtaining DSL service from an unaffiliated ISP.

***Ordering DSL Service From SBC by Phone:*** Users of SBC’s web site, [www.sbc.com](http://www.sbc.com), can order DSL off of the web site or contact SBC at 1-888-792-3751. Anyone contacting this number will hear, “Welcome to Southwestern Bell, a leader in high speed solutions. In order to properly route your call, please select one of the

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<sup>6</sup> Excerpts of SBC’s web page are attached hereto as Exhibit 3.

<sup>7</sup> [http://www.swbell.com/DSL\\_new/content/0,5289,2,00.html](http://www.swbell.com/DSL_new/content/0,5289,2,00.html)

<sup>8</sup> [http://www.swbell.com/DSL\\_new/content/0,5289,35,00.html](http://www.swbell.com/DSL_new/content/0,5289,35,00.html)



following: For DSL service for your home, press 1. For DSL service for your business, press 2.”<sup>9</sup> After entering a Missouri phone number to check availability of DSL service for a residence, a user will be given the following options:

To order DSL service or check availability in your area, press 1. To check the status of your DSL order or to change an existing appointment, press 2. For technical assistance with your DSL service, including self-install or to report a problem with your DSL service, press 3. For billing questions on your DSL service, press 4. For frequently asked questions about DSL service or to obtain additional information, press 5.<sup>10</sup>

Nowhere in the recording does SBC state that its “DSL service” is provided through its affiliate Southwestern Bell Internet Services, Inc.

***SBC’s Proposed Contracts with ISPs:*** A key point that SBC does not highlight in its application is the fact that the General Services Agreement that SBC-ASI is offering to ISPs includes two provisions that allow ASI—the wholesale telecommunications provider—to retain ownership of the DSL connection and to provision other applications to the end-user on the same DSL line that is carrying the ISP’s Internet traffic. *See* Habeeb Aff., Att. B, Section 2G.

According to one of the contract provisions, ASI has the option of providing other applications over the same DSL transport that it is offering to the ISP. The provision states:

SBC-ASI may, at its own discretion, provision other applications on the same line that is carrying Customer’s virtual session to the End User location and may fully market such applications and related services. When Customer’s End User uses such applications and related services, actual data transfer or throughput for any application or virtual session may be reduced. Habeeb Aff., Att. B, Section 2G.

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<sup>9</sup> A representative from WorldCom called the number 1-888-792-3751 listed on Southwestern Bell’s web site for ordering residential DSL service on August 31, 2001.

<sup>10</sup> Recording that a user hears when dialing 1-888-792-3751, and pressing 1 for DSL service for home.

Under this provision the ISP is not purchasing full access to the DSL loop. Similarly, there is another provision in the agreement that states that “SBC-ASI will retain ownership of the overall connection.” Habeeb Aff., Att. B, Section 2F. As expected, independent ISPs are up in arms over these provisions and are refusing to sign the agreement.<sup>11</sup> A large group of ISPs filed a complaint with the California Public Utilities Commission in July, 2001 seeking injunctive relief, specific performance and penalties against ASI for imposition of these contract provisions.<sup>12</sup> With these provisions, the ISPs are not given full rights for use of the DSL transport that they are purchasing. One ISP representative calls ASI’s contract provisions, “a blatant attempt to get us out of the DSL business. And it is successful.”<sup>13</sup> SBC’s proposed contract shows that SBC remains the de facto provider of DSL services to end users.

**C. Competitive Providers Have No Means by Which to Resell SBC’s DSL Service**

Despite that fact that its investor materials, web site and ordering center all reference SBC’s sale of DSL service to residential end users, SBC argues that its DSL service is a wholesale offering and not a retail offering subject to resale by competitors. SBC Brief at 56. SBC’s arguments rest on the language of section 251 (c) (4), which requires incumbent local exchange carriers to “offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not

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<sup>11</sup> See “ISPs fight for more than DSL Scraps,” CNET.com, dated June 26, 2001, available at [http://news.cnet.com/news/0-1004-200-6384263.html?tag=tp\\_pr](http://news.cnet.com/news/0-1004-200-6384263.html?tag=tp_pr) (“According to the ISPs, SBC is asking for new rights as part of the contract. Previously, the ISPs had effectively bought access to the full data “pipe” that provided the high-speed Net service. Now, for about the same price, they’re being asked to give Pacific Bell—part of the SBC network—rights to provide their customers with the new services that analysts say will become key offerings driving people to broadband: video on demand, videoconferencing, and so on.”)

<sup>12</sup> See Verified Complaint of the California ISP Association, Inc. Against Pacific Bell Telephone Company and SBC Advanced Solutions, Inc., attached as Exhibit 4.

telecommunications carriers.” SBC argues that since it sells DSL transport to ISPs—its own ISP and unaffiliated ISPs—and not directly to end users, it has no resale obligation. The fact is that SBC’s ISP affiliate is a corporate shell.

As SBC well knows, the court of appeals in *ASCENT v. FCC* found that incumbent LEC’s could not avoid their section 251 resale obligations by offering advanced services through a wholly owned affiliate.<sup>14</sup> As SBC explains in its filing, there was a time when ASI sold DSL transport service directly to residential customers. At some point, ASI made the business decision to discontinue selling DSL transport to residential customers and to focus instead on the wholesale provision of DSL transport to ISPs. SBC Brief at 51-52. It is not clear when SBC-ASI made this decision, but it appears to be motivated in part by the *ASCENT* litigation, which took place shortly after SBC’s merger. Nonetheless, since ASI had been selling DSL transport directly to residential customers, a very few number of customers in Missouri and Arkansas totaling less than 1,300, are grandfathered retail residential customers. SBC explains that it is moving these customers to ISPs, but for as long as the retail customers exist, SBC will make the DSL transport available at a wholesale discount to any CLEC wishing to serve them. SBC Brief at 52. However, as explained below, a competitor cannot resell SBC’s DSL service to serve the remaining 99-plus percent of the population in Missouri and Arkansas.

Although SBC’s filing is silent on this point, over 80 percent of SBC’s current DSL subscribers obtain their DSL service from SBC’s wholly owned affiliate SBIS.

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<sup>13</sup> Statement from Lisa Bickford, Chief Operating Officer of InReach Internet, an ISP in California quoted in “ISPs fight for more than DSL Scraps,” CNET.com, dated June 26, 2001, available at [http://news.cnet.com/news/0-1004-200-6384263.html?tag=tp\\_pr](http://news.cnet.com/news/0-1004-200-6384263.html?tag=tp_pr)

SBC Brief at 59. In other words, over 800,000 of SBC's one million-plus customers obtain their DSL service from SBC's affiliate SBIS. As for why unaffiliated ISPs throughout SBC's region have so few customers compared to SBC's affiliate SBIS, one need not look further than SBC's web site for the answer: SBC markets the sale of DSL for SBIS. In its filing, SBC acknowledges the joint marketing agreement between SBC and SBIS but later notes that it offers its DSL service to unaffiliated ISPs under the same terms and conditions that it offers such services to its own ISP affiliate, SBIS. SBC Brief at 62. SBC's application does not elaborate on the comparisons between the wholesale offerings to unaffiliated ISPs versus SBIS. Thus, there is no evidence that SBC offers its DSL service to unaffiliated ISPs on the same terms and conditions that it offers service to its own ISP. In fact, there is evidence in the record to the contrary. The marketing arrangement between SBC and SBIS appears to be an exclusive one. SBC's web site contains no reference to the fact that it sells DSL transport to unaffiliated ISPs. Thus, a user interested in obtaining DSL service from SBC would not know that he or she had a choice of ISPs.

In attempting to demonstrate that its DSL telecommunications transport service offered to ISPs is not sold at retail to end users and thus is not subject to resale under section 251(c)(4), SBC relies on the Commission's *Second Advanced Services Order*. SBC Brief at 54-56. SBC correctly states that in that order the "Commission concluded that advanced services sold to ISPs as an input component to the ISP's high-speed Internet access product are not sold at retail." SBC Brief at 54. SBC goes on to explain that part of the Commission's rationale in making such a finding was that the ISP takes

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<sup>14</sup> *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) ("ASCENT"). SBC was an intervenor in the case and argued that advanced services that were provided through its affiliate ASI

on the consumer-oriented tasks of marketing, billing, and accepting repair troubles directly from the end-user. SBC Brief at 55. SBC explains that the ISPs assume the “consumer-oriented tasks” of marketing SBC’s DSL service as part of the ISPs’ own retail information service product. SBC Brief at 56. While this may be true for *unaffiliated* ISPs, it is certainly not the case for SBC’s own affiliate, SBIS.

When it comes to distinguishing the relationship between SBC’s own affiliated ISP and ASI, SBC asks the Commission to ignore its *Second Advanced Services Order*. SBC Brief at 60. SBC explains that ASI and SBIS are affiliates within the same corporate family and do “not necessarily reflect the strict separation between the responsibilities of a wholesale telecommunications provider and the ‘consumer-oriented tasks’ of a retail information service provider articulated in the *Second Advanced Services Order*.” SBC Brief at 60. “In fact,” says SBC, “this Commission’s *Second Advanced Services Order* does not expressly address the relationship between a telecommunications provider and its affiliated ISP.” SBC Brief at 60.

In drawing the distinction between telecommunications services sold to end-users and those sold to ISPs, the Commission stated:

We are confident that our findings reinforce the resale requirements of the Act by ensuring that resellers are able to acquire advanced services sold by incumbent LECs to residential and business end-users at wholesale rates, thus ensuring that competitive carriers are able to enter the advanced services market by providing to consumers the same quality service offerings provided by incumbent LECs. Moreover, we expect that our conclusions will stimulate the development and deployment of broadband services to residential markets in furtherance of the Commission’s mandate to encourage the deployment of advanced telecommunications capability to all Americans. We believe that our conclusions will encourage incumbents to offer advanced services to Internet Service Providers at the lowest possible price.<sup>15</sup>

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should not be available for resale.

Unfortunately, because of SBC's anticompetitive conduct to disguise its DSL service to end users as information services provided by an ISP, the Commission's findings in the *Second Advanced Services Order* do not ensure that resellers are able to acquire advanced services sold by the incumbent. SBC has stifled competition by distorting the Commission's prior orders, creating a shell affiliate when it is SBC that is the actual service provider.

**D. SBC has Not Demonstrated that its Telecommunications Services Are Available for Resale Under Sections 251 and 271 of the Act**

As discussed above, SBC fully markets the DSL Internet Service provided by its affiliate, SBIS. In addition, over 80 percent of SBC's DSL customers are served by SBIS. Moreover, SBC is forcing unaffiliated ISPs to sign a contract that allows SBC's data affiliate, ASI, to retain ownership of the DSL connection and to provide other applications over the line that the ISPs are purchasing. If the Commission wants to see the promise of the Telecommunications Act met, and the intent of the *ASCENT* decision followed, the Commission must require that SBC sell its DSL transport service to carriers at a wholesale discount as provided by section 251(c)(4) of the Telecommunications Act. Until then, SBC is not in compliance with checklist item 14 (resale) of section 271.

**E. SBC Has Yet to Implement a Competitive Means By Which CLECs can Access Fiber-Fed Loops to Provide DSL Services to Customers Served Off of Remote Terminals**

Today, the only means by which a competitor can provide DSL service on loops served by fiber is to collocate a full DSLAM in SBC's remote terminal and lease fiber back to the central office. In other proceedings pending before the Commission,

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<sup>15</sup> Second Advanced Services Order at ¶ 20.

WorldCom has explained that the ILECs' remote terminals lack sufficient space to allow collocation of full DSLAMs.<sup>16</sup> SBC's remote terminals are no exception.<sup>17</sup>

While WorldCom does not have outstanding requests for collocation at remote terminals in Missouri or Arkansas, WorldCom is concerned about obtaining competitive access to fiber-fed loops in SBC's region in order to provide DSL service. The most efficient and competitive means for such access is through SBC's Project Pronto.

SBC's \$6 billion Project Pronto initiative will reach an estimated 77 million Americans by the end of 2002.<sup>18</sup> SBC's web site contains maps showing Project Pronto's reach in Missouri and Arkansas, and those maps, attached as Exhibit 5, show the number of areas that will be impacted by the fiber-based initiative. SBC claims that Project Pronto will create a new business opportunity for CLECs because data CLECs will be able to use SBC's Broadband Services architecture "to provide high-speed data service to millions of new customers that may not otherwise be economically attractive to serve." Chapman MO Aff. ¶ 139. In addition, SBC says that its Broadband Service Offering will broaden the customer base for data CLECs, including ASI. Chapman MO Aff. ¶ 129. Despite these generic pronouncements, SBC does not explain how CLECs will access its Broadband Service Offering and at what cost. Without a determination as to how competitors can access Project Pronto, competitors are essentially precluded from serving any end-user served by fiber-fed digital loop carrier ("DLC").

WorldCom disagrees with SBC's assertion that Project Pronto is not subject to the Commission's unbundling rules under the Telecommunications Act. The remote

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<sup>16</sup> See Joint Comments of Covad Communications Company, Rhythms NetConnections Inc., and WorldCom, Inc., CC Docket Nos. 98-147, 96-98 (February 27, 2001); *see also* Comments of Rhythms NetConnections Inc., CC Docket Nos. 98-147, 96-98, dated October 12, 2000.

terminal electronics are inherent features, functions and capabilities of the loop that competitors should be able to access when purchasing a loop from SBC. WorldCom has submitted detailed comments on this issue in response to the Commission's rulemaking on methods by which a competitor could access the high frequency portion of a loop served through fiber-fed DLC.<sup>19</sup> In comments filed February 27, 2001, WorldCom, along with Covad and Rhythms requested that the Commission clarify its rules to make clear that full NGDLC functionality, including DSLAM line cards, fall squarely within the loop unbundling provisions of section 251(c)(3) and Commission rules.<sup>20</sup> Until the Commission reaches a decision on the outstanding rulemaking, competitors are precluded from offering DSL to all consumers. This application is therefore premature and should be denied.

## **II. SBC'S OSS IS NOT BACKED BY SUFFICIENT COMMERICAL EXPERIENCE OR A THIRD PARTY TEST, EVEN IN THE WAKE OF MISREPRESENTATIONS ABOUT ITS OSS PERFORMANCE**

In addition to the DSL issues described above, SBC does not provide sufficient evidence of adequate OSS. SBC asks the Commission to rely on its self-certified assurances of OSS readiness, even after just having been caught misrepresenting the facts about its OSS. Self-certification by a BOC seeking long distance entry is entirely too weak a basis on which to judge its OSS-readiness. Although this is true across the board, it is particularly important where, as here, the BOC applying for long distance authority has been caught misrepresenting in sworn testimony its compliance with section 271 checklist requirements.

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<sup>17</sup> See *Project Pronto Order* ¶ 22, n.59 ("SBC states that space limitations restrict the amount of equipment that can be installed in remote terminal sites").

<sup>18</sup> <http://www.sbc.com/data/network/0,2951,6,00.html>

<sup>19</sup> *Line Sharing Reconsideration Order*.



In particular, SBC made misrepresentations in its Kansas-Oklahoma application about access to loop qualification or loop make-up information provided to competitors.<sup>21</sup> SBC also recently made misrepresentations about the workability of its maintenance and repair functions. It is therefore astonishing that SBC would file yet another application resting on self-certification and attestations by Ernst & Young. The Commission should not even consider granting this application absent an independent, third-party test of SBC's OSS.

In order to satisfy checklist item two, 47 U.S.C. § 271(c)(2)(B)(ii), SBC must provide reasonable and nondiscriminatory access to its OSS so that competitors are permitted the opportunity to compete in the local market. *See, e.g.*, Texas Order ¶¶ 94-98; New York Order ¶¶ 83-87. The Commission has held previously that the best determination of OSS-readiness is successful commercial experience. In neither Arkansas nor Missouri is there currently any local residential facilities-based competition to speak of, and there is no indication that any is on its way. WorldCom, which is now competing for local residential customers in six states, does not provide local residential service in either Arkansas or Missouri, despite SBC's claims otherwise. SBC Brief at 13, 15. In Arkansas, CLECs that had attempted to provide facilities-based residential service have left the market, with only grandfathered customers remaining. Alltel announced in a hearing before the Arkansas Commission last November that it would cease offering residential service in Arkansas due to poor UNE rates and non-recurring charges.<sup>22</sup> Less than six months later, Navigator Telecom announced at an April 20, 2001 hearing before

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<sup>20</sup> *See* Joint Comments of Covad Communications Company, Rhythms NetConnections Inc., and WorldCom, Inc., CC Docket Nos. 98-147, 96-98 (February 27, 2001).

<sup>21</sup> *See, e.g.*, Letter to Magalie Roman Salas, FCC, from SBC, CC Docket No. 00-217 (April 13, 2001). (acknowledging "inaccurate" affidavits).